

on the President's plan, at least listen to what he said a year ago when he said we can raise this tax revenue. We don't have to raise tax rates. We can do it by closing some of these loopholes.

He was right about that. If we are going to have to raise revenues, I would suggest that is the way to do it—at all costs avoid raising tax rates, which would, as he said a year ago, be a blow to our economy.

Mr. President, I note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. LEAHY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

#### EXECUTIVE SESSION

NOMINATIONS OF MARK E. WALKER TO BE UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF FLORIDA AND TERRENCE G. BERG TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF MICHIGAN

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to executive session to consider the following nominations, which the clerk will report.

The assistant legislative clerk read the nominations of Mark E. Walker, of Florida, to be United States District Judge for the Northern District of Florida, and Terrence G. Berg, of Michigan, to be United States District Judge for the Eastern District of Michigan.

The PRESIDING OFFICER. Under the previous order, there will be 15 minutes of debate, equally divided and controlled in the usual form.

The Senator from Vermont is recognized.

Mr. LEAHY. Mr. President, today the Senate will finally be allowed to vote on the nominations of Judge Mark Walker to fill a vacancy on the U.S. District Court for the Northern District of Florida and of Terrence Berg to fill a judicial emergency vacancy on the U.S. District Court for the Eastern District of Michigan. It has taken far too long for this day to come but I congratulate these nominees and their families on their confirmations.

After this vote, the Senate remains backlogged with 20 judicial nominations reported by the Judiciary Committee, including 15 nominations from before the August recess. They should be confirmed before the Senate ad-

journs for the year. If the Senate were allowed to act in the best interests of the American people, it would vote to confirm these nominees and reduce the judicial vacancies that are plaguing our Federal courts.

Senate Republicans are establishing a new and harmful precedent of stalling judicial nominees on the Senate Executive Calendar who are ready for final action by insisting that they be delayed into the succeeding year. They held up judicial nominees three years ago, they did it two years ago, they did it last year, and they are doing it again. They have found a new way to employ their old trick of a pocket filibuster. They stall nominees into the next year and force the Senate to continue work on nominees from the past year for the first several months of the new year. They delay and delay and push other confirmations back in time and then cut off Senate consideration of any nominees.

By way of example, last December, Senate Republicans refused to confirm a single nominee before the end of the year. It then took us until May of the following year to confirm the 19 nominees they stalled from the previous year's Calendar, and we achieved that only after the Majority Leader was forced to file cloture on 17 nominees. The fact is that the Senate has been allowed to confirm only 19 nominees who were reported this year by the Senate Judiciary Committee. That is by far the lowest total for a presidential election year since 1996, when Senate Republicans, who were then in the Majority, would only allow 17 of President Clinton's nominees to be confirmed.

These delays in filling judicial vacancies are harmful to our Nation's courts and to the American people they serve. The Senate should be taking action on all the pending nominees so that we can make real progress for the American people and reduce the damagingly high number of judicial vacancies. Federal judicial vacancies remain near 80. By this point in President Bush's first term we had reduced judicial vacancies to 28. There were more than 80 vacancies when the year began. There were more than 80 vacancies this past March when the Majority Leader was forced to take the extraordinary step of filing cloture petitions on 17 district court nominations. And there are still currently near 80 vacancies today.

Those who argue that it would be "unprecedented" to confirm long-stalled nominations because they have delayed them into this lameduck session are wrong. They say that because there were no lameduck confirmations in 1984, 1988, 1992, 1996, 2000, or 2008, we should therefore not confirm these nominees, and we should allow nearly a dozen judicial emergency vacancies to remain unfilled. They have omitted some important facts. What they fail to acknowledge is that they have delayed action on 17 of these nominees since before the August recess. In 1984, 1988, 1992, and 1996—the first four of

their purported examples—there were no lameduck sessions. Those are not precedents supporting their contentions seeking to justify their current obstruction.

In 2000 and 2008, in keeping with Senate tradition, the Senate had done its job and had confirmed all pending nominations and cleared the Calendar. There were no pending judicial nominees to be given a final confirmation vote by the Senate in those years. Those are not precedent for the current Republican obstruction. Following the example from those years would have meant confirming all the nominations reported before the August recess long before this post-election lame duck session.

The fact is that from 1980 until this year, when a lame duck session followed a presidential election, every single judicial nominee reported with bipartisan Judiciary Committee support has been confirmed. That is the precedent that Senate Republicans are now breaking. According to the non-partisan Congressional Research Service, no consensus nominee reported prior to the August recess has ever been denied a vote—before now. That is something Senate Democrats have not done in any lameduck session, whether after a presidential or midterm election.

Senate Democrats allowed votes on 20 of President George W. Bush's judicial nominees, including three circuit court nominees, in the lameduck session after the elections in 2002. I remember, I was the Chairman of the Judiciary Committee who moved forward with those votes, including one on a very controversial circuit court nominee. The Senate proceeded to confirm judicial nominees in lame duck sessions after the elections in 2004 and 2006. In 2006 that included confirming another circuit court nominee. We proceeded to confirm 19 judicial nominees in the lame duck session after the elections in 2010, including five circuit court nominees.

That is our history and recent precedent. Those who contend that judicial confirmation votes during lame duck sessions do not take place are wrong. I urge them to reexamine the false premises for their contentions and I urge the Senate Republican leadership to reassess its damaging tactics. The new precedent they are creating is bad for the Senate, the Federal courts and, most importantly, for the American people.

Moreover, arguments about past Senate practices do not help fill long-standing vacancies on our Federal courts, which are in dire need of additional assistance. Arguments about past Senate practice do not help the American people obtain justice. There are no good reasons to hold up the judicial nominations being stalled on the Senate Executive Calendar. A wrong-headed desire for partisan payback for some imagined offense from years ago is no good reason. A continuing effort